IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 62 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M/S CHAUDHRAY AGR.AGENCIE

Versus

MESSRS PATEL IND.

Appearance:

1. Appeal from Order No. 62 of 1981

MR SURESH M SHAH for Petitioner No. 1

MR KB PADIA for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 11/10/2001

ORAL JUDGEMENT

The appellant has challenged in this appeal the impugned order passed by the learned Civil Judge (S.D.), Rajkot in Civil Misc. Application No.966 of 1978

rejecting the application for setting aside the ex-parte decree passed by the learned Judge on 26.10.1997 in Special Civil Suit No.21 of 1977.

The learned Judge dismissed application for setting aside ex-parte decree passed against the present appellant on the ground that there was a delay in filing application for setting aside ex-parte decree and as application Ex.7 filed in Civil Misc. Application No.966 of 1978 for condoning the delay in filing the application late is dismissed the said application is also required to be dismissed as having become time barred.

It was submitted by learned counsel Shri Shah for the appellant that according to the appellant he came to know about the ex-parte decree being passed against him only on 18.11.1978 and within the period of less than one month i.e. on 13.12.1978 he prayed for setting aside the decree by way of Civil Misc. Application No.966 of 1978. He therefore, submitted that there was no delay and learned Judge was wrong in dismissing the said application on the ground that the application for condonation of delay in filing the said application for setting aside the ex-parte decree was rejected and the decree was not condoned. This argument of Mr.Shah cannot be accepted for the simple reason that the judgment and decree was passed on 26.10.1977. It may be that the appellant might have come to know late on 18.11.1978 as claimed by him but the very fact that along with the application for setting aside the ex-parte decree he filed application Ex.7 for setting ex-parte decree shows that it was time barred.

Main question is as to whether learned Judge was right or wrong in dismissing application Ex.7 for condonation of delay? From the impugned detailed order dated 15.1.1987 passed below Ex.7 filed in Civil Misc. Application No.966 of 1978 it is clear that the appellant miserably failed to show cause much less sufficient cause for condoning delay. On facts if the learned judge was not satisfied that the delay was satisfactorily explained then certainly this court will not take a different view of the matter in this appeal.

In the instant case, one more submission of Mr.Shah that the appellant was required to be informed about every adjournment cannot be accepted because the appellant himself had prayed for adjournment by sending telegram after he was duly served with the summons by registered post on 10.3.1977. In fact, on his request made by telegram, the learned Judge adjourned the matter

on 7.4.1977 but later on the present appellant did not bother about the proceedings in the suit and ultimately issues were framed on 22.8.1977 and the evidence of the plaintiff was recorded on 13.10.1977. Thereafter the judgment and decree was passed against the present appellant on 26.10.1977. Under the circumstances, the explanation which is sought to be offered by the appellant that he was not in know of the proceedings pending before the trial court in suit cannot be accepted and in my considered opinion the learned Judge has rightly rejected application Ex.7 for condoning delay in filing Civil Misc. Application No.966 of 1978. Once that application is rejected then there is no alternative for the leaned Judge but to dismiss Misc. Application No.966 of 1978 for setting aside the decree as time barred. Under the circumstances, no interference is called for and accordingly this appeal fails and the same is dismissed. Interim relief, if any, granted earlier stands vacated forthwith.

(B.J.Shethna, J.)

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